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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**US FREE TRADE AGREEMENT IMPLEMENTATION (CUSTOMS TARIFF)
BILL 2004**

EXPLANATORY MEMORANDUM

**(Circulated by authority of the
Minister for Justice and Customs, Senator
the Honourable Christopher Martin Ellison)**

US FREE TRADE AGREEMENT IMPLEMENTATION (CUSTOMS TARIFF)
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OUTLINE

The purpose of the US Free Trade Agreement Implementation (Customs Tariff) Bill 2004 is to amend the *Customs Tariff Act 1995* (the Tariff) to implement part of the Australia-United States Free Trade Agreement (AUSFTA) by:

- providing duty-free access for certain goods and preferential rates of customs duty for other goods that are US originating goods in accordance with new Division 1C of Part VIII of the *Customs Act 1901* (the Customs Act). New Division 1C is proposed to be inserted in the Customs Act by the US Free Trade Agreement Implementation Bill 2004;
- phasing the above preferential rates of customs duty for certain goods to Free by 2015;
- creating a new Schedule 5 to the Tariff to accommodate the AUSFTA arrangements; and
- inserting a regulation making power in the Tariff to prescribe certain footwear that will be subject to the phasing rates of customs duty.

FINANCIAL IMPACT STATEMENT

It is estimated that the customs duty forgone as a result of the implementation of the AUSFTA will amount to \$190 million in 2004-2005, \$400 million in 2005-2006, \$420 million in 2006-2007 and \$450 million in 2007-2008.

REGULATION IMPACT STATEMENT

A Regulation Impact Statement covering the tariff amendments is contained in the Explanatory Memorandum for the US Free Trade Agreement Implementation Bill 2004.

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NOTES ON CLAUSES

Clause 1 – Short Title

This clause provides for the Act, when enacted, to be cited as the “*US Free Trade Agreement Implementation (Customs Tariff) Act 2004*”.

Clause 2 – Commencement

Item 1 of the table in this clause provides that sections 1 to 3 and anything in the Act not covered elsewhere in the table will commence on the day on which the Act receives the Royal Assent.

Item 2 of the table provides that items 1 to 32 of Schedule 1 will commence on the later of:

- (a) 1 January 2005; and
- (b) the day on which the Australia-United States Free Trade Agreement, done at Washington DC on 18 May 2004, comes into force for Australia.

This item will not commence if the event mentioned in paragraph (b) does not occur.

This item also provides that the Minister for Trade must announce by notice in the *Gazette* the day on which the AUSFTA comes into force for Australia.

Item 3 of the table provides that item 33 of Schedule 1 will commence on the later of:

- (a) immediately after the commencement of Schedule 1 to the *Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Act*; and
- (b) immediately after the commencement of the provisions covered by table item 2.

This item will not commence if both of the events mentioned in paragraphs (a) and (b) do not occur.

Item 4 of the table provides that item 34 of Schedule 1, which will insert new Schedule 5 into the Tariff, will commence at the same time as the provisions covered by table item 2.

Item 5 of the table provides that items 35 to 56 of Schedule 1 will commence on the later of:

- (a) the start of the day on which the *Customs Tariff Amendment (Fuels) Act 2004* receives the Royal Assent; and
- (b) immediately after the commencement of the provisions covered by table item 2.

This item will not commence if both of the events mentioned in paragraphs (a) and (b) do not occur.

Item 6 of the table provides that item 57 of Schedule 1 commences at the same time as the provisions covered by table item 2.

Clause 3 – Schedule(s)

This clause is the formal enabling provision for the Schedule to the Bill, providing that each Act specified in a Schedule to this Act is amended or repealed as set out in the applicable items of that Schedule. The clause also provides that any other item in a Schedule to this Act has effect according to its terms.

Schedule 1 – Amendments

On entry into force of the AUSFTA, the US Free Trade Agreement Implementation (Customs Tariff) Bill 2004 will amend the Tariff to provide a rate of customs duty of Free for US originating goods, unless a rate of customs duty is specified for those goods. Under the AUSFTA, rates of customs duty for certain US originating goods will phase to Free over a number of years, and certain alcohol, tobacco and petroleum products will continue to be subject to rates of customs duty that are equivalent to the rates of excise duty on those goods if they were locally manufactured. Second hand cars will also continue to pay the additional duty of \$12,000 per vehicle.

The phasing rates and the rates of customs duty on alcohol, tobacco and petroleum products will be set out in new Schedule 5 to the Tariff.

Amendments are being made to the Tariff to include references to new Schedule 5 and US originating goods, and to specify duty rates in Schedule 4 (Schedule of Concessional Rates) to the Tariff, as required.

Item 1 Subsection 3(1) (at the end of the definition of *rate column*)

Item 1 amends the definition of *rate column* in subsection 3(1) of the Tariff to include a reference to the third column of the table in new Schedule 5 of the Tariff.

Item 2 Subsection 9(1)

Item 2 amends subsection 9(1) by deleting the reference to Schedule 3 or 4 and replacing it with a reference to Schedule 3, 4 or 5.

Item 3 After paragraph 11(1)(b)

Section 11 of the Tariff sets out the rules that apply to phasing rates of customs duty.

Item 3 adds new paragraph (1)(ba) to include a reference to a rate of duty set out in the third column of an item in the table in new Schedule 5 to the Tariff that applies to the goods.

Item 4 After paragraph 11(1)(d)

Item 4 adds new paragraph (1)(e) to include a reference to a specified date set out in the third column of the table in new Schedule 5 to the Tariff that applies to the goods.

Item 5 After paragraph 11(2)(b)

Item 5 adds new paragraph (2)(ba) to include a reference to a rate of duty set out in the third column of the table in new Schedule 5 to the Tariff that applies to the goods.

Item 6 After section 13

Section 13 of the Tariff provides that goods are the produce or manufacture of a country or place for the purposes of the Tariff only if they are the produce or manufacture of that country or place under Division 1A or Division 1B of Part VIII of the Customs Act.

Item 6 inserts new section 13A into the Tariff so that for the purposes of the Tariff, goods are US originating goods if, and only if, they are US originating goods under new Division 1C of Part VIII of the Customs Act. Division 1C of Part VIII of the Customs Act sets out the rules for determining whether goods are US originating goods.

Item 7 At the end of subsection 14(1)

Subsection 14(1) of the Tariff applies customs duty to goods from particular countries or places or classes of countries or places by reference to abbreviations for those countries and classes of countries.

Item 7 adds a new paragraph (k) to section 14 to specify that a rate of duty set out in the rate column in Schedule 4 applies in relation to the United States of America if “US” is specified in relation to that rate.

Item 8 Paragraph 16(a)

Section 16 of the Tariff sets out how customs duty is calculated, in particular for goods the produce or manufacture of particular countries and classes of countries for preference purposes. Paragraph 16(a) provides that if the goods are not the produce or manufacture of a Preference Country, the duty must be worked out by reference to the general rate set out in the third column of the tariff classification in Schedule 3 under which the goods are classified.

Item 8 replaces paragraph 16(a) to ensure that the general rate of duty set out in Schedule 3 also does not apply to US originating goods.

Item 9 At the end of section 16

Item 9 inserts a new paragraph 16(k) into the Tariff that sets out how customs duty is calculated for US originating goods. This paragraph provides that duty payable on goods that are US originating goods is Free unless the goods are classified to a heading or subheading in Schedule 3 that is specified in column 2 of an item in the table in new Schedule 5. If the goods are so classified, the duty on those goods will be worked out by reference to the rate of duty set out in column 3 of the relevant item in Schedule 5.

Item 9 also inserts a new subsection 16(2) into the Tariff that provides that if column 2 of an item in the table in Schedule 5 includes “(prescribed goods only)”, subparagraph (1)(k)(i) does not apply to the goods unless the goods are also prescribed for the purposes of that item. Items 921 to 927 include “(prescribed goods only)”. This is explained in more detail in the notes on those items.

Item 10 Subsection 18(1)

Section 18 of the Tariff sets out how customs duty is calculated in those circumstances where a concessional rate of customs duty under an item in Schedule 4 to the Tariff is provided for particular goods. In particular, subsection 18(1) provides that a concessional rate of customs duty can be used only where the rate of customs duty is less than that which would otherwise be payable in Schedule 3.

Item 10 repeals and substitutes subsection 18(1) to add a new paragraph (1)(b). This ensures that if an item in Schedule 4 applies to goods, that item applies only if the duty in respect of those goods under that item is less than the duty that, but for this section, would be payable under an item in the table in Schedule 5 that applies to the goods.

Item 11 Paragraph 18(2)(a)

Schedule 4 to the Tariff lists approximately 100 items where a concessional rate of customs duty is provided for particular goods. Section 18 of the Tariff sets out how customs duty is calculated for goods to which a concessional item applies, in particular for goods the produce or manufacture of particular countries and classes of countries for preference purposes.

Paragraph 18(2)(a) provides that if the goods are not the produce or manufacture of a Preference Country, the duty must be worked out by reference to the general rate set out in the third column of the item in Schedule 4 which applies to the goods.

Item 11 repeals and substitutes paragraph 18(2)(a) to ensure that the general rate of duty set out in Schedule 4 also does not apply to US originating goods.

Item 12 At the end of subsection 18(2)

Item 12 inserts a new paragraph 18(k) to set out how customs duty is calculated for goods that are US originating goods and that are subject to a concessional item in Schedule 4. This paragraph provides that duty for US originating goods is the rate that applies in relation to the United States of America set out in the third column of an item in Schedule 4, or, where no rate of customs duty is specified, Free.

Item 13 Subsection 19(1)

Section 6A of the *Excise Tariff Act 1921* provides for the automatic indexation of certain excise rates of duty in line with movements in the Consumer Price Index in February and August of each year. The goods to which automatic indexation applies are certain alcohol, tobacco and petroleum products.

Section 19 of the Tariff provides for the same indexation to be made to customs rates of duty for equivalent imported goods. For this purpose, section 19 contains a table that pairs customs tariff subheadings with the corresponding excise tariff items.

Item 13 amends subsection 19(1) to add a reference to the rate column in new Schedule 5 of the Tariff to enable the indexation provisions to apply to the rates of customs duty that apply to US originating goods.

Item 14 Before section 21

Item 14 inserts a new section 20A that allows the making of regulations prescribing matters in relation to the Tariff.

Items 15-33 Schedule 4

Schedule 4 to the Tariff lists approximately 100 items where a concessional rate of customs duty is provided for particular goods. In most cases, the concessional rate of customs duty for such goods is Free. However, in some circumstances, a lower rate of customs duty than the general rate is payable.

As subsection 18(2) of the Tariff provides that the rate of customs duty for US originating goods, subject to a concessional item in Schedule 4, is Free unless a rate for the US is specified, it is necessary to specify a rate of customs duty for US originating goods in these circumstances as Annex 2B of the AUSFTA only allows duty concessions for goods in Schedule 3 to the Tariff.

Items 15, 16, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31 and 32 amend the existing rates of customs duty rates for relevant Schedule 4 items by adding an extra line that specifies the appropriate duty rate for US originating goods.

Items 17 and 19 insert a reference to new Schedule 5 in the description of goods for concessional items 20A and 20B (goods returned to Australia after repair overseas).

Item 23 amends the duty rate for item 44 by including a reference to new Schedule 5. Item 44 grants concessional entry to particular imported goods that are for use in the manufacture of excisable goods in terms of section 24 of the *Excise Act 1901*. This amendment ensures that this concession will apply to US originating goods.

Item 33 amends item 73 of Schedule 4. Item 73 is being inserted by the Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004. Item 73 will need to be amended to include a reference to a rate of duty for US originating goods.

This item will not commence unless the *Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Act 2004* and the AUSFTA enter into force. If both of these events occur, this amendment will commence on the later of these two events.

Item 34 At the end of the Act

Schedule 5 – US originating goods

Item 34 inserts new Schedule 5 into the Tariff.

Items 1 to 120 and items 122 to 133 of the table in Schedule 5 impose customs duty on certain alcohol, tobacco and petroleum products that are US originating goods at a rate that is equivalent to the excise duty imposed, under the *Excise Tariff Act 1921*, on the same goods when domestically produced, in accordance with Article 1.2 (General Definitions) paragraph 4(a) of the AUSFTA.

Section 16 of the Tariff will provide that the rates of customs duty for US originating goods are Free unless the goods are classified to a heading or subheading in Schedule 3 that is specified in column 2 of an item in the table in Schedule 5, whereby the rate of customs duty set out in column 3 of that item will apply. Therefore, it is necessary to include the relevant headings and subheadings of Schedule 3 for certain alcohol, tobacco and petroleum products in Schedule 5 and to specify a rate of customs duty for these goods in order to ensure that customs duty continues to apply to these goods as US originating goods. These goods are not subject to the phasing regime set out in Annex 2B of the AUSFTA.

Item 121 of the table in Schedule 5 imposes a phasing rate of duty on US originating goods classified to tariff subheading 2918.90.00 in Schedule 3 of the Tariff. Under Annex 2B of the AUSFTA, rates of customs duty for certain US originating goods are to be reduced to Free over a period of time. Column 3 of the table in Schedule 5 opposite the relevant headings and subheadings of Schedule 3 to the Tariff sets out the timing of those phasing rates and also the rates of customs duty that will apply to US originating goods at each step of that phasing.

Items 134 to 920 of the table in Schedule 5 also impose phasing rates of customs duty on US originating goods in accordance with Annex 2B of the Agreement.

Items 921 to 927 of the table in Schedule 5 insert phasing rates of customs duty for certain footwear in accordance with Annex 2B of the Agreement.

Under new subparagraph 16(1)(k)(i) and new subsection 16(2), these phasing rates will apply to a good (footwear) that is classified to a subheading in Schedule 3 to the Tariff that is specified in column 2 of items 921 to 927 but only if the good is prescribed for the purposes of that item.

There is a worldwide classification system that has been adopted by all countries that are members of the World Customs Organization, which is known as the Harmonized Commodity Description and Coding System 2002 (the Harmonized System). In Australia, the Harmonized System applies in the Tariff. Under the Harmonized System, the chapter, heading, and subheading numbers for any good are identical in any country using the Harmonized System. However, the final two digits of subheadings are not harmonized and each importing country individually assigns them.

The 8 digit subheadings for footwear in Australia and the United States are different. Under the Agreement, footwear that is classified to certain subheadings in the United States is to be subject to the phasing rates of customs duty. Since the subheadings are not the same in Australia, the goods that fall to the subheadings specified in items 921 to 927 that are subject to the phased rates of customs duty will be prescribed. They will be prescribed by reference

to the subheading that they would be classified to, if they had been imported into the United States.

Items 928 to 951 of the table in Schedule 5 impose phasing rates of customs duty on US originating goods in accordance with Annex 2B of the Agreement.

Items 35 to 56 Schedule 5

Items 35 to 56 contain amendments to certain items of the table in Schedule 5 to the Tariff.

These amendments reflect amendments to the Tariff as proposed in the Customs Tariff Amendment (Fuels) Bill 2004. These amendments implement alterations to the Tariff relating to low sulphur diesel, aviation fuel and biodiesel, and create new subheadings in Schedule 3. These new subheadings and associated rates of customs duty will need to be incorporated into Schedule 5.

Items 35 to 56 will not commence unless the *Customs Tariff Amendment (Fuels) Act 2004* commences and the AUSFTA enters into force. If both of these events occur, these items will commence on the later of these two events.

Item 57 User's Guide

This item repeals and substitutes the User's Guide to the Tariff to include appropriate references to new Schedule 5 to the Tariff.